

RESOLUTION 2020-38

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ENCINITAS, CALIFORNIA AMENDING CITY COUNCIL POLICY NO. C035 REGULATING SMALL WIRELESS FACILITIES AND OTHER INFRASTRUCTURE DEPLOYMENTS IN THE PUBLIC RIGHTS-OF-WAY AND ADOPTING A MASTER LICENSE AGREEMENT TEMPLATE AND SITE LICENSE FEE OF \$270

WHEREAS, pursuant to the California Constitution, Article XI, Section 7; California Government Code Section 37100 and other applicable law, the City of Encinitas City Council may make and enforce within its limits all local, police, sanitary and other ordinances, resolutions and other regulations not in conflict with general laws;

WHEREAS, on August 21, 2019, the City Council adopted City Council Policy No. C035 under Resolution No. 2019-66, which established reasonable, uniform and comprehensive standards and procedures for small wireless facilities and other infrastructure deployment in the public rights-of-way, for the construction, installation, collocation, modification, operation, relocation and removal of such facilities within the City of Encinitas' territorial boundaries, consistent with and to the extent permitted under federal and California state law;

WHEREAS, in response to all comments received and considered at a subsequent Community Workshop held on September 23, 2019, on October 30, 2019, the City Council adopted an amended City Council Policy No. C035 under Resolution No. 2019-91;

WHEREAS, on October 30, 2019, City Council also directed staff to reevaluate certain provisions in the Policy related to ADA and FHAA accommodation, fire safety review, application reviews and insurance requirements, as well as consider additional revisions proposed by a community group known as "Stop 5G Encinitas";

WHEREAS, in response to staff's evaluation and consideration of the proposed revisions, the City Council desires to again amend City Council Policy No. C035 as more particularly described in **Exhibit "A"**, attached hereto and incorporated herein by this reference (the "**Amended Policy**"); and


WHEREAS, on June 10, 2020, the City Council held a public hearing to consider this Resolution and the Amended Policy and Master License Agreement (MLA) Template, at which the City Council received, reviewed and considered the staff report, written and oral testimony from the public and other information in the record.

**NOW, THEREFORE, BE IT RESOLVED, THE CITY OF ENCINITAS CITY COUNCIL
HEREBY FINDS, DETERMINES AND RESOLVES AS FOLLOWS:**

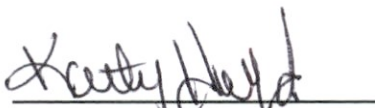
- 1. Findings.** The City Council finds that: (a) the facts set forth in the recitals in this Resolution are true and correct and incorporated by reference; (b) the recitals constitute findings in this matter and, together with the staff report, other written reports, public testimony and other information contained in the record, are an adequate and appropriate evidentiary basis for the actions taken in this Resolution; (c) the provisions in this Resolution and the Amended Policy are consistent with the General Plan, Encinitas Municipal Code and applicable federal and state law; and (d) neither this Resolution nor the Amended Policy will be detrimental to the public interest, health, safety, convenience or welfare.

2. **Amended Policy.** The City Council hereby amends City Council Policy No. C035 as shown in the Amended Policy.
3. **Master License Agreement (MLA) Template and Site License Fee.** The City Council hereby adopts a Master License Agreement (MLA) Template and a Site License Fee of \$270 per year for each attachment to a municipality-owned structure in the public right-of-way.
4. **Environmental Review.** The City Council finds that, pursuant to CEQA Guidelines Section 15061(b)(3), there is no possibility that this project will have a significant impact on the physical environment. This Resolution merely authorizes amendments to City Council Policy C035 which regulates small wireless facilities and other infrastructure deployments. This Resolution does not directly or indirectly authorize or approve any actual changes in the physical environment. Applications for any new small wireless facility or other infrastructure deployment or change to an existing small wireless facility or other infrastructure deployment would be subject to additional environmental review on a case-by-case basis. Accordingly, the City Council finds that this Resolution is not subject to CEQA or, in the alternative, is exempt from CEQA under the general rule.
5. **Severability.** If any section, subsection, paragraph, sentence, clause, phrase or term (each a "Provision") in this Resolution or the Amended Policy, or any Provision's application to any person or circumstance, is held illegal, invalid or unconstitutional by a court of competent jurisdiction, all other Provisions not held illegal, invalid or unconstitutional, or such Provision's application to other persons or circumstances shall not be affected. The City Council declares that it would have passed this Resolution and the Amended Policy, and each Provision therein, whether any one or more Provisions be declared illegal, invalid or unconstitutional.
6. **Effective Date.** This Resolution and the Amended Policy will become immediately effective upon adoption by the City Council and will remain effective until amended, superseded or repealed by a separate resolution adopted by the City Council.
7. **Publication.** The City Clerk shall cause this Resolution and the Amended Policy to be published in electronic form on the City of Encinitas website, in physical form for public inspection at City of Encinitas City Hall and at least two other public places within the City of Encinitas and in any other manner required by law.

PASSED, APPROVED and ADOPTED on the 10th day of June, 2020, by the City Council of the City of Encinitas, State of California.


Catherine S. Blakespear, Mayor
City of Encinitas

ATTEST:


Kathy Hollywood, City Clerk

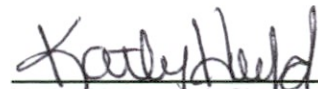
APPROVED AS TO FORM:



Leslie E. Devaney, City Attorney

CERTIFICATION: I, Kathy Hollywood, City Clerk of the City of Encinitas, California, do hereby certify under penalty of perjury that the foregoing Resolution was duly adopted at a regular meeting of the City Council on the 10th day of June, 2020 by the following vote:

AYES:	Blakespear, Hinze, Hubbard, Kranz, Mosca
NOES:	None
ABSENT:	None
ABSTAIN:	None



Kathy Hollywood, City Clerk

EXHIBIT "A"
AMENDED CITY COUNCIL POLICY C035

(appears behind this coversheet)

**CITY OF ENCINITAS
CITY COUNCIL POLICY
ADMINISTRATIVE MANUAL**

Policy Title: Small Wireless Facilities

Section: City Council

Responsible Department: City Manager's Office

Number: C035

Approved By: City Council

Date Approved: 08/21/19 – Resolution No. 2019-66

Dates Amended: 10/30/19 – Resolution No. 2019-91

06/10/20 – Resolution No. 2020-38

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SECTION 1. BACKGROUND AND INTRODUCTION

In 1996, Congress adopted the Telecommunications Act to balance the national interest in advanced communications services and infrastructure with legitimate local government authority to enforce zoning and other regulations to manage infrastructure deployments on private property and in the public rights-of-way. Under section 704, which applies to personal wireless service facilities, local governments retain all their traditional zoning authority subject to specifically enumerated limitations.¹ Section 253 preempts local regulations that prohibit or effectively prohibit telecommunication services (*i.e.*, common carrier services) except competitively neutral and nondiscriminatory regulations to manage the public rights-of-way and require fair and reasonable compensation.

Communication technologies have significantly changed since 1996. Whereas cell sites were traditionally deployed on tall towers and rooftops over low frequency bands that travel long distances, cell sites are increasingly installed on streetlights and utility infrastructure on new frequency bands that travel shorter distances. According to the Federal Communications Commission ("FCC") and the wireless industry, these so-called "small wireless facilities" or "small cells" are essential to the next technological evolution. The industry currently estimates that each national carrier will need to deploy between 30 and 60 small cells, connected by approximately 8 miles of fiber optic cable, per square mile.

On September 27, 2018, the FCC adopted a *Declaratory Ruling and Third Report and Order*, FCC 18-133 (the "*Small Cell Order*"), in connection with two informal rulemaking proceedings entitled *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79, and *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84. In general, the *Small Cell Order*: (1) restricts the fees and other compensation state and local governments may receive from applicants; (2) requires all aesthetic regulations to be reasonable, no more burdensome than those applied to other infrastructure deployments, objective and published in advance; (3) mandates that local officials negotiate access agreements, review permit applications and conduct any appeals within significantly shorter timeframes; and (4) creates new evidentiary presumptions that make it more difficult for local governments to defend themselves if an action or failure to act is challenged in court. The regulations adopted in the *Small Cell Order* significantly curtail the local authority over wireless and wireline communication facilities reserved to State and local governments under sections 253 and 704 in the Telecommunications Act.

The City of Encinitas ("City"), nevertheless, retains "broad authority to determine, for purposes of the public health, safety, and welfare, the appropriate uses of land within a local jurisdiction's borders", *T-Mobile West LLC v. City & County of San Francisco*, 438 P.3d 1107 (Cal. 2019), including all zoning powers that are not specifically preempted by federal law, *T-Mobile S., LLC v. City of Roswell*, 574 U.S. 293 (2015).

SECTION 2. PURPOSE AND INTENT

- (a) The City of Encinitas City Council ("City Council"), in keeping with the mission and values of City of Encinitas "to serve the people by protecting life, property and the environment", recognizes that this coastal city is one of the most beautiful cities in California, known for its beaches, ocean views, and stewardship in ecological preservation, which all serve as

¹ Local zoning regulations cannot prohibit or effectively prohibit personal wireless services, unreasonably discriminate among functionally equivalent services or regulate based on environmental impacts from radiofrequency ("RF") emissions. In addition, local decisions must be made within a reasonable time and any denial requires a written decision based on substantial evidence in the written record.

a draw for tourists, which is a boon to the local economy. Encinitas has become a microcosm of natural beauty with the vistas of the Pacific Ocean to our west, the San Elijo Lagoon ecological reserve and its estuaries to the south, and mountain views to the east. Encinitas possesses world-famous beaches which draw surfing competitions making Encinitas a year-round tourist destination of distinction. Encinitas has always been an environmentally-minded city protecting the ocean and its pristine beaches, the inland waterways, and the natural habitat. To incrementally achieve increased beautification, the City has a general policy of requiring the undergrounding of new utilities (see Muni. Code § 23.36.120). Encinitas is proud to have protected its scenic beauty along the coast, with both elements serving to promote tourism in the area. Along historic Route 101 and throughout the city there are architectural reminders that Encinitas is taking care to preserve historic landmarks in as close to their original state as possible.

- (b) The City of Encinitas (the "City") intends this Policy to establish reasonable, uniform and comprehensive standards and procedures for small wireless facilities deployment, construction, installation, collocation, modification, operation, relocation and removal within the City's territorial boundaries, consistent with and to the extent permitted under federal and California state law. The standards and procedures contained in this Policy are intended to, and should be applied to, protect and promote public health, safety and welfare, and balance the benefits that flow from robust, advanced wireless services with the City's local values, which include without limitation the aesthetic character of the City, its neighborhoods and community. This Policy is also intended to reflect and promote the community interest by (1) ensuring that the balance between public and private interests is maintained; (2) protecting the City's visual character (particularly in residential zones, open spaces, primary public viewsheds and areas with community and civic character) from potential adverse impacts, clutter and/or visual blight created or exacerbated by small wireless facilities and related communications infrastructure; (3) protecting and preserving the City's environmental resources; (4) protecting and preserving the City's public rights-of-way and municipal infrastructure located within the City's public rights-of-way; and (5) promoting access to high-quality, advanced wireless services for the City's residents, businesses and visitors.
- (c) Notwithstanding the forgoing objectives, Section 704 of the Telecommunications Act of 1996 as interpreted by court decisions and FCC rules prohibit the City from taking into consideration the potential health effects and environmental consequences of RF radiation emissions from wireless facilities that are compliant with FCC standards. The City is nevertheless aware of an increasing body of scientific research documenting biological and environmental damage from RF radiation at levels below FCC limits. Peer reviewed studies have reported biological damage, including but not limited to genotoxicity, carcinogenicity, neurotoxicity in humans and animals, brain and heart cancer, autoimmune disease, DNA damage, mitochondrial damage, brain damage, breakdown of the brain's protective blood brain barrier, infertility and insomnia at levels below FCC limits. The City has growing concerns that the RF standards set by the FCC may not adequately protect public health and safety.
- (d) This Policy is intended to establish clear procedures for application intake and completeness review. The City of Encinitas City Council finds that chronically incomplete applications significantly contribute to unreasonable delay and create barriers to infrastructure deployment. Chronically incomplete applications unfairly prejudice other applicants who may be prepared to submit complete applications for infrastructure in the same or substantially the same location. Chronically incomplete applications also unfairly prejudice the City's ability to act on such applications within the "presumptively

reasonable" timeframes established by the FCC. The provisions in this Policy afford applicants and City staff opportunities for direct, real-time communication about completeness issues to mitigate incomplete applications prior to submittal. The provisions in this Policy also encourage applicants to timely respond to incomplete notices.

- (e) This Policy is intended to establish regulations, standards and guidelines for all infrastructure deployments unless specifically prohibited by applicable law. For example, the City Council recognizes that certain state safety regulations, like the CPUC's General Order 95, require equipment on joint utility poles to be installed or separated from other equipment in ways that may result in larger or bulkier installations than the City would otherwise prefer. This Policy has been designed to mitigate those potential aesthetic impacts to the extent possible without violating those health and safety regulations. The City Council also recognizes that different infrastructure deployments may be managed through other mechanisms, such as franchise or license agreements. Although such deployments may be exempt from the "ROW administrative design review permit" established in this Policy, the City official or department that administers such deployment shall, to the extent consistent with applicable law, apply the same regulations, standards and guidelines, including but not limited to the restrictions and preferences in Section 10, to the permit or other approval issued in connection with a request for authorization under such franchise, license or other agreement. The City Council also recognizes that different infrastructure deployments may have different impacts on the public rights-of-way that require different regulations, standards or guidelines to protect public health, safety and welfare. However, to the extent that different regulations, standards or guidelines are applied to small wireless facilities or other infrastructure deployments, the City Council intends that they be no more burdensome than the other when viewed under the totality of the circumstances.
- (f) This Policy is not intended to, nor shall it be interpreted or applied to: (1) prohibit or effectively prohibit any personal wireless service provider's ability to provide personal wireless services; (2) prohibit or effectively prohibit any entity's ability to provide any telecommunications service, subject to any competitively neutral and nondiscriminatory rules, regulations or other legal requirements for rights-of-way management; (3) unreasonably discriminate among providers of functionally equivalent personal wireless services; (4) deny any request for authorization to place, construct or modify personal wireless service facilities on the basis of environmental effects of radio frequency emissions to the extent that such wireless facilities comply with the FCC's regulations concerning such emissions; (5) prohibit any collocation or modification that the City may not deny under federal or California state law; (6) impose any unreasonable, discriminatory or anticompetitive fees that exceed the reasonable cost to provide the services for which the fee is charged; or (7) otherwise authorize the City to preempt any applicable federal or California law.
- (g) However, many aspects of the Small Cell Order are under current legal challenge and Congressional bills are under consideration that may, in the future, afford the City additional authority over the approval and siting of wireless facilities. The City therefore intends to retain the ability to regulate existing and future wireless facilities, including any approved by this Policy, and minimize the permanent effect of potentially temporary legal restraints.
- (h) Due to the possibility of rapid and unforeseeable developments in telecommunication technology and customer preferences, and the long-term adverse aesthetic clutter of numerous wireless facilities, the City intends to conduct the roll out of new wireless

facilities in a methodical and measured manner to ultimately permit no more facilities than necessary to provide personal wireless services to the community.

- (i) This Policy is not intended to limit or prejudice any individual's ability to seek a reasonable accommodation under the Americans with Disabilities Act, the Fair Housing Act Amendments of 1988, or any other similar federal or state law due to electromagnetic sensitivity or symptoms based on exposure to radio frequency emissions.

SECTION 3. DEFINITIONS

The definitions in this Section 3 shall be applicable to the terms, phrases and words in this Policy. Undefined terms, phrases or words will have the meanings assigned to them in 47 U.S.C. § 153 or, if not defined therein, will have the meaning assigned to them in Encinitas Municipal Code or, if not defined in either therein, will have their ordinary meanings. If any definition assigned to any term, phrase or word in this Section 3 conflicts with any federal or state-mandated definition, the federal or state-mandated definition will control.

"accessory equipment" means equipment other than antennas used in connection with a small wireless facility or other infrastructure deployment. The term includes "transmission equipment" as defined by the FCC in 47 C.F.R. § 1.6100(b)(8), as may be amended or superseded.

"antenna" means the same as defined by the FCC in 47 C.F.R. § 1.6002(b), as may be amended or superseded.

"batched application" means more than one application submitted at the same time.

"collector road" means four-lane undivided roadway, with a typical right-of-way width of 70-84 feet and a curb-to-curb pavement width of approximately 64 feet. A collector road's function is to distribute traffic between local streets and major and prime arterials. Although some collector roads serve as through routes, their primary function is to provide access from surrounding land uses. The term "collector road" as used in this Policy is defined in the Encinitas General Plan, Circulation Element, page C-18.

"collocation" means the same as defined by the FCC in 47 C.F.R. § 1.6002(g), as may be amended or superseded, which defines that term as mounting or installing an antenna facility on a pre-existing structure and/or modifying a structure for the purpose of mounting or installing an antenna facility on that structure. For clarification, the FCC defines the term "collocation" in two contexts, one for small wireless facilities in 47 C.F.R. § 1.6002(g) and another for requests pursuant to Section 6409 in 47 C.F.R. § 1.6100(b)(2). This Policy uses the term "collocation" as defined for small wireless facilities unless expressly provided otherwise.

"CPUC" means the California Public Utilities Commission established in the California Constitution, Article XII, § 5, or its duly appointed successor agency.

"decorative pole" means any pole that includes decorative or ornamental features, design elements and/or materials for aesthetic purposes.

"Director" means the Director of Development Services Department or the Director's designee.

"FCC" means the Federal Communications Commission or its duly appointed successor agency.

"FCC Shot Clock" means the FCC's interpretation of presumptively reasonable time frame,

accounting for any tolling or extension, within which the City generally must act on a request for authorization in connection with a personal wireless service facility, as such time frame is defined by the FCC and as may be amended or superseded. In the event that the FCC Shot Clock becomes inapplicable or are extended for any reason, the timetables provided in this Policy, to the extent determined by the FCC Shot Clock, shall also automatically become inapplicable or extended.

"local street" means streets designed to provide access to individual parcels in the City. Local streets consist of two lanes with a typical right-of-way width of 50-70 feet and a pavement width of 40 feet. The term "local street" as used in this Policy is defined in the Encinitas General Plan, Circulation Element, page C-18.

"major arterial" means a four-lane divided roadway, with a typical right-of-way width of 85-120 feet and a curb-to-curb pavement width of approximately 80 feet. The term "major arterial" as used in this Policy is defined in the Encinitas General Plan, Circulation Element, page C-18.

"ministerial permit" means any City-issued non-discretionary permit required to commence or complete any construction or other activity subject to the City's jurisdiction. Ministerial permits may include, without limitation, any building permit, construction permit, electrical permit, encroachment permit, excavation permit, right-of-way utility permit, right-of-way construction permit, traffic control permit and/or any similar over-the-counter approval issued by the City's departments.

"OTARD" means an "over-the-air reception device" and includes all antennas and antenna supports covered by 47 C.F.R. § 1.4000(a)(1), as may be amended or superseded.

"personal wireless services" means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended or superseded.

"personal wireless service facilities" means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended or superseded.

"persons entitled to notice" means the record owners and legal occupants of all properties within 500 feet from the proposed project site. Notice to the legal occupants shall be deemed given when sent to the property's physical address.

"prime arterial" means a six-lane divided roadway, with a typical right-of-way width of 120-130 feet and curb-to-curb pavement width of 100-110 feet. The term "prime arterial" as used in this Policy is defined in the Encinitas General Plan, Circulation Element, page C-16.

"prohibited support structure" means any support structure on which the City prohibits the deployment of wireless facilities, except when authorized as a pre-approved design pursuant to this Policy. Prohibited support structures include decorative poles; traffic signal poles, cabinets or related structures; new, nonreplacement wood poles; and any utility pole scheduled for removal within 18 months from the time the Director acts on the ROW application for such pole.

"public right-of-way" or **"public rights-of-way"** means land or an interest in land which by deed, conveyance, agreement, easement, dedication, usage or process of law is reserved for or dedicated to or open to the use by the general public for road or highway purposes. The term does not include private or public utility easements unless such easement is reserved for or dedicated to or open to the use by the general public for road or highway purposes.

"RF" means radio frequency or electromagnetic waves.

"Section 6409" means Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, codified as 47 U.S.C. § 1455(a), as may be amended or superseded.

"shot clock days" means calendar days counted toward the presumptively reasonable time under the applicable FCC Shot Clock. The term "shot clock days" does not include any calendar days on which the FCC Shot Clock is tolled (i.e., "paused"). As an illustration and not a limitation, if an applicant applies on April 1, receives a valid incomplete notice on April 5 and then resubmits on April 20, only four "shot clock days" have elapsed because the time between the incomplete notice and resubmittal are not counted.

"small wireless facility" means the same as defined by the FCC in 47 C.F.R. § 1.6002(l), as may be amended or superseded, and does not include any strand-mounted facilities commonly installed on a strand, cable or line strung between one or more support structures.

"support structure" means a "structure" as defined by the FCC in 47 C.F.R. § 1.6002(m), as may be amended or superseded.

"technically infeasible" means a circumstance in which the applicant has demonstrated by applicable clear and convincing evidence (photos, technical data, etc.) that compliance with a specific requirement within this Policy is physically impossible and not merely more difficult or expensive than a noncompliant alternative. For example, the existence of a lease, lease option or other agreement shall not be deemed to make other locations not subject to such agreements technically infeasible.

"underground utility district" means any area in the City within which overhead wires, cables, cabinets and associated overhead equipment, appurtenances and other improvements are either (1) prohibited by ordinance, resolution or other applicable law; (2) scheduled to be relocated underground within 18 months from the time an application is submitted; or (3) primarily located underground at the time an application is submitted.

SECTION 4. APPLICABILITY

- (a) **Small Wireless Facilities.** Except as expressly provided otherwise, the provisions in this Policy shall be applicable to all existing small wireless facilities and all applications and requests for authorization to construct, install, attach, operate, collocate, modify, reconstruct, relocate, remove or otherwise deploy small wireless facilities within the public rights-of-way within the City's jurisdictional and territorial boundaries. The provisions of this Policy shall apply to any applications received prior to the effective date of this Policy to the extent permitted under applicable laws.
- (b) **Other Infrastructure Deployments.** To the extent that other infrastructure deployments, including without limitation any deployments that require approval pursuant to Encinitas Municipal Code Chapter 15.04, involve the same or substantially similar structures, apparatus, antennas, equipment, fixtures, cabinets, cables or improvements, the Director or other official responsible to review and approve or deny requests for authorization in connection with such other infrastructure deployment shall apply the provisions in this Policy unless specifically prohibited by applicable law.

- (c) **City's Proprietary Capacity.** This Policy shall not limit the authority of the City to refuse or otherwise condition approval of installation of a wireless facility on City property in its proprietary capacity.

SECTION 5. REQUIRED PERMITS AND APPROVALS

- (a) **ROW Administrative Design Review Permit.** A "ROW administrative design review permit" ("permit"), subject to the Director's review and approval in accordance with this Policy, shall be required for all small wireless facilities and other infrastructure deployments located in whole or in part within the public rights-of-way.
- (b) **Exemptions.** Notwithstanding anything in this Policy to the contrary, a ROW administrative design review permit shall not be required for:
 - (1) wireless facilities or other infrastructure deployments owned and operated by the City for its use;
 - (2) OTARD facilities; or
 - (3) requests for approval to collocate, replace or remove transmission equipment at an existing wireless tower or base station submitted pursuant to Section 6409.
- (c) **Other Permits and Approvals.** In addition to a ROW administrative design review permit, the applicant must obtain all other permits and regulatory approvals as may be required by any other federal, state or local government agencies, which includes without limitation any ministerial permits and/or other approvals issued by other City departments or divisions. All applications for ministerial permits submitted in connection with a proposed small wireless facility or other infrastructure deployment must contain a valid ROW administrative design review permit issued by the City for the proposed facility. Any application for any ministerial permit(s) submitted without such ROW administrative design review permit may be denied without prejudice. Any ROW administrative design review permit granted under this policy shall remain subject to all lawful conditions and/or legal requirements associated with such other permits or approvals. Furthermore, and to avoid potential confusion, an exemption from the ROW administrative design review permit requirement under Subsection 5(b) does not exempt the same wireless facilities or other infrastructure deployments from any other permits or approvals, which includes without limitation any ministerial permits from the City.

SECTION 6. APPLICATION AND REVIEW PROCEDURES

- (a) **Application Requirements for Small Wireless Facilities.** In addition to any other publicly stated requirements, all ROW administrative design review permit applications for small wireless facilities must include the following information and materials:
 - (1) **Application Form.** The applicant shall submit a complete, duly executed ROW administrative design review permit application on the then-current form prepared by the City. The applicant shall state which FCC Shot Clock it asserts will apply to the proposed project and explain the basis for its assertion.
 - (2) **Application Fee.** The applicant shall submit the applicable ROW administrative design review permit application fee adopted by City Council resolution. Batched

applications must include the applicable ROW administrative design review permit application fee for each small wireless facility in the batch. If no ROW administrative design review permit application fee has been adopted, then the applicant must submit a signed written statement that acknowledges that the applicant will be required to submit a deposit estimated by the Director to reimburse the City for its reasonable costs incurred in connection with the application. Should the deposit be inadequate an additional deposit shall be required. If the deposit exceeds the actual costs, the difference will be returned to the applicant.

- (3) **Construction Drawings.** The applicant shall submit true and correct construction drawings, prepared, signed and stamped by a licensed or registered engineer, that depict all the existing and proposed improvements, equipment and conditions related to the proposed project, which includes without limitation any and all poles, posts, pedestals, traffic signals, towers, streets, sidewalks, pedestrian ramps, driveways, curbs, gutters, drains, handholes, manholes, fire hydrants, equipment cabinets, antennas, cables, trees and other landscape features. The construction drawings must: (i) contain cut sheets that contain the technical specifications for all existing and proposed antennas and accessory equipment, which includes without limitation the manufacturer, model number and physical dimensions; (ii) identify all potential support structures within 500 feet from the proposed project site and call out such structures' overall height above ground level; (iii) depict the applicant's preliminary plan for electric and data backhaul utilities, which shall include the anticipated locations for all conduits, cables, wires, handholes, junctions, transformers, meters, disconnect switches, and points of connection; and (iv) demonstrate that proposed project will be in full compliance with all applicable health and safety laws, regulations or other rules, which includes without limitation all building codes, fire codes, electric codes, local street standards and specifications, and public utility regulations and orders.
- (4) **Site Survey.** For any small wireless facility, the applicant shall submit a survey prepared, signed and stamped by a licensed or registered engineer. The survey must identify and depict all existing boundaries, encroachments and other structures within 75 feet from the proposed project site and any new improvements, which includes without limitation all: (i) traffic lanes; (ii) all private properties and property lines; (iii) above and below-grade utilities and related structures and encroachments; (iv) fire hydrants, roadside call boxes and other public safety infrastructure; (v) streetlights, decorative poles, traffic signals and permanent signage; (vi) sidewalks, driveways, parkways, curbs, gutters and storm drains; (vii) benches, trash cans, mailboxes, kiosks and other street furniture; and (viii) existing trees, planters and other landscaping features.
- (5) **Photo Simulations.** The applicant shall submit site photographs and photo simulations that show the existing location and proposed small wireless facility in context from at least three vantage points within the public streets or other publicly accessible spaces, together with a vicinity map that shows the proposed site location and the photo location for each vantage point. At least one simulation must depict the small wireless facility from a vantage point approximately 50 feet from the proposed support structure or location. The photo simulations and vicinity map shall be incorporated into the construction plans submitted with the application. The photo simulations must show all required elements of the facility that will be visible and shall be based on actual site photographs.

- (6) **Project Narrative and Justification.** The applicant shall submit a written statement that explains in plain factual detail whether and why the proposed facility qualifies as a "small wireless facility" as defined by the FCC in 47 C.F.R. § 1.6002(l). A complete written narrative analysis will state the applicable standard and all the facts that allow the City to conclude the standard has been met—bare conclusions not factually supported do not constitute a complete written analysis. As part of the written statement the applicant must also include (i) whether and why the proposed support is a "structure" as defined by the FCC in 47 C.F.R. § 1.6002(m); (ii) whether and why the proposed wireless facility meets each required finding for a ROW administrative design review permit as provided in Subsection 8(b); (iii) analysis of all other technically feasible locations within or without the City that could serve the area intended to be served by the facility; (iv) an inventory of existing support structures within 500 feet of the location of the proposed site; (v) if the applicant is not a wireless carrier, demonstrate a bona fide plan to actually deploy facilities by the applicant for a specific third-party wireless tenant; (vi) identification of each proposed lessee or owner of an antenna to be installed on the facility; and (vii) a written report from a recognized fire safety specialist that describes the potential fire hazards posed by the facility to surrounding vegetation and/or structures, and any steps taken by the applicant to mitigate such hazards.
- (A) **Master Plan.** The project narrative shall also include a statement as to any other planned deployments by the applicant within the City over the next 24-month period from the date of submittal. The master plan shall visually depict all anticipated site locations and be accompanied by list of proposed facilities including type of technology (cellular, PCS, ESMR, etc.), type of service to be provided and purpose of the facility, anticipated date of installation, address and zoning district of each site and site size and topography, number of antennae and base stations per site and per carrier, location (pole, roof, etc.) and type of antennae on each site, identity of carriers that will occupy each site, any restrictions imposed by site owner, RF range and wattage output of equipment, height of equipment, and properties and rights of ways from which facilities will be visible. The master plan list shall be provided to the City in a digital form in an Excel (or equivalent) spreadsheet.
- (B) **Compliance with NEPA.** All applications shall include confirmation that an environmental assessment, or other application determination, has been completed by or on behalf of the FCC for any facility proposed in a location identified in 47 C.F.R. 1.307 (including a floodplain) or as otherwise required by National Environmental Policy Act.
- (7) **RF Compliance Report.** The applicant, and each intended owner or operator of an antenna to be installed on the site, shall submit an RF exposure compliance report that certifies under penalty of perjury that the proposed small wireless facility, both individually and cumulatively with all other emitters that contribute more than five percent to the cumulative emissions in the vicinity (if any), will comply with applicable federal RF exposure standards and exposure limits. The RF report must be prepared and certified by an RF engineer acceptable to the Director. The RF report must include the actual frequency bands and power levels (in watts effective radiated power) for all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas

and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also the boundaries of areas with RF exposures in excess of the controlled/occupational limit (as that term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the project site. If the applicant submits a batched application, a separate RF report shall be prepared for each facility associated with the batch. All RF compliance reports and the selection of circumference of the vicinity subject to testing shall be reviewed and confirmed by a qualified professional retained by the City pursuant to paragraph (h) below.

- (8) **Regulatory Authorization.** The applicant shall submit evidence of the applicant's regulatory status under federal and California law to provide the services and construct the small wireless facility proposed in the application.
- (9) **Pole License Agreement.** For any small wireless facility proposed to be installed on any structure owned or controlled by the City and located within the public rights-of-way, the applicant shall submit an executed Pole License Agreement on a form prepared by the City that states the terms and conditions for such non-exclusive use by the applicant. No changes shall be permitted to the City's Pole License Agreement except as may be indicated on the form itself. Any unpermitted changes to the City's Pole License Agreement shall be deemed a basis to deem the application incomplete. Refusal to accept the terms and conditions in the City's Pole License Agreement shall be an independently sufficient basis to deny the application without prejudice.
- (10) **Property Owner's Authorization.** The applicant must submit a written authorization from the support structure owner(s) that authorizes the applicant to submit and accept a ROW administrative design review permit in connection with the subject structure.
- (11) **Acoustic Analysis.** The applicant shall submit an acoustic analysis prepared and certified by a licensed engineer for the proposed small wireless facility and all associated equipment including all environmental control units, sump pumps, temporary backup power generators and permanent backup power generators demonstrating compliance with the City's noise regulations. The acoustic analysis must also include an analysis of the manufacturers' specifications for all noise-emitting equipment and a depiction of the proposed equipment relative to all adjacent property lines.
- (12) **Structural Analysis.** The applicant shall submit a report prepared and certified by an engineer licensed by the State of California (or other qualified personnel acceptable to the City) that evaluates whether the underlying pole or support structure has the structural integrity to support all the proposed equipment and attachments. At a minimum, the analysis must be consistent with all applicable requirements in CPUC General Order 95 (including, but not limited to, load and pole overturning calculations), the National Electric Safety Code, the standards and practices required for an ANSI/TIA-222 Maintenance and Conditions Assessment (under the most current revision at the time of submittal) and any safety and construction standards required by law and the utility provider. The

report shall contain tolerances including but not limited to guy tensions if applicable, plumb, twist, slip splices and take-up devices.

- (A) Residents of the City increasingly rely on wireless service (texting, voice, VOIP) to receive emergency notifications and communicate with family members during emergencies. Therefore, wireless facilities must be designed to remain resilient during outages, earthquakes and extreme weather events. Consequently, applicants shall (1) provide a certificate from a structural engineer licensed by the State, or other appropriate licensed professional acceptable to the Director, that (i), when fully loaded with antennas, transmitters, and other equipment and camouflaging the facility is designed to withstand the forces expected during the maximum credible earthquake and maximum credible wind speeds, and (ii) components, and the all connections between various components of the facility and with necessary power and utility lines, are designed to be protected against damage by "100-year" flooding, historical maximum ambient temperature sustained over the maximum credible duration, area maximum credible high wind, maximum credible earthquake, lightning strike and power surge events; (2) provide a diagram detailing buildings and other features located in fall zones or launch distances of components in the event of facility failure due to high wind or ground movement; (3) detailed description of measures taken on a network-wide basis, including backup power coverage for a portion of regional macro facilities, to ensure that basic communication service is available in the event of a disaster or power loss; (4) detailed description of the failure or outage history of facility components or similar systems (such as during SDG&E and PG&E power shutoffs in October and November 2019) operated by the operator on whose behalf the application is submitted; and (5) detailed description of hazards posed by the facility in the event of failure due to flood, high wind, high heat, earthquake, outage, lightning strike or wildfire.
- (13) **Environmental Impact Assessment.** The applicant shall submit an environmental impact assessment on the then-current form prepared by the City to determine whether the proposed project is categorically exempt under Article 19 of the CEQA Guidelines, or whether the proposed project will require a Negative Declaration, Mitigated Negative Declaration or an Environmental Impact Report.
- (14) **Landscape Plan.** A landscape plan shall be submitted with project application submittal indicating all existing vegetation that is to be retained on the site and any additional vegetation that is needed to satisfactorily screen the facility from adjacent land uses in public view areas. That landscape plan shall conform to all the requirements set forth in this Policy and the City landscape guidelines manual as required by City of Encinitas Municipal Code Section 23.24.190 as they may be amended or superseded. The landscape plan shall also include a tree protection plan prepared by a certified arborist and specify measures to protect trees during project construction and/or improvement.
- (15) **Exception Request.** Any application that involves a request for an exception pursuant to Section 13 of this Policy shall include a written statement in a separate document that includes all the following information: (i) whether the applicant seeks an exception pursuant to Subsections 13(b)(1), 13(b)(2) or both; (ii) the specific provision(s) and/or requirement(s) in this Policy from which the applicant seeks an

exception; (iii) the specific provision(s) of federal or state law under which the applicant seeks an exception; (iv) the standard of evidence applicable to each specific provision(s) of federal or state law under which the applicant seeks an exception; (v) a statement of the factual evidence that supports the findings for the exception requested; (vi) a statement that describes the extent of the exception required and the factual evidence to show the exception would be narrowly tailored in compliance with Subsection 13(g); and (vii) any other information the applicant believes relevant to the issues raised in the exception request. Given the short timeframe in which the City must review the application and the deployment volume anticipated by both the FCC and wireless industry, this written statement must be included with the **initial submittal** to afford City staff a reasonable time to act on the application. Any request by the applicant to consider an exception after the initial submittal shall be treated as a new application.

- (16) **Truth and Accuracy Statement.** Any application submitted pursuant to this Policy shall be signed by the applicant, or a person knowledgeable about the proposed facility and authorized to act on the applicant's behalf, attesting, that under penalty of perjury, that all information, representations and disclosures in the application are true, correct and complete.

(b) **Voluntary Pre-submittal Meetings.**

- (1) **Pre-submittal Conference.** The City strongly encourages, but does not require, applicants to schedule and attend a pre-submittal conference with the Director and other City staff. This voluntary, pre-submittal conference does not cause the FCC Shot Clock to begin and is intended to streamline the review process through collaborative, informal discussion that includes, without limitation, the appropriate project classification and review process; any latent issues in connection with the proposed project and/or project site, including compliance with generally applicable rules for public health and safety; potential concealment issues or concerns (if applicable); coordination with other City departments implicated by the proposed project; and application completeness issues. Pre-submittal conferences are especially encouraged when an applicant seeks to submit one or more batched applications so that the Director may advise the applicant about any staffing, scheduling or unusual circumstances or issues that may hinder the City's ability to meet the presumptively reasonable timeframes under the FCC Shot Clock. To mitigate unnecessary delays due to application incompleteness, applicants are encouraged (but not required) to bring any draft applications, plans, maps or other materials so that City staff may provide informal feedback and guidance about whether such applications or other materials may be incomplete or unacceptable in their then-current form. The Director will use reasonable efforts to provide the applicant with an appointment within approximately five working days after receiving a written request and any applicable fee or deposit to reimburse the City for its reasonable costs to provide the staff and/or consulting time and services rendered in the pre-submittal conference.
- (2) **Community Meeting.** The City also strongly encourages, but does not require, applicants to schedule, notice, arrange, and attend a pre-submittal community meeting with all interested members of the public. This voluntary, pre-submittal public meeting does not cause the FCC Shot Clock to begin and is intended to give applicants the opportunity to hear from members of the public regarding proposed deployment. Applicants are encouraged (but not required) to bring any draft applications, plans, maps, presentations or other materials to facilitate the public's understanding of the

applicant's proposal. The City seeks to encourage dialogue that may allow applicants to address areas of concern and may lessen the likelihood of appeals of the Director's decision to the City Council by any interested person or entity.

- (c) **Submittal Appointments.** All applications must be submitted in person to the City at a pre-scheduled appointment with the Director. Prospective applicants may generally submit one application per appointment, or up to five individual applications per appointment as a batch. Potential applicants may schedule successive appointments for multiple applications whenever feasible and not prejudicial to other applicants for any other development project as determined by the Director. The Director shall use reasonable efforts to offer an appointment within five working days after the Director receives a written request from a potential applicant. Any purported application received without an appointment, whether delivered in-person, by mail or through any other means, will not be considered duly filed, whether the City retains, returns or destroys the materials received.
- (d) **On-Site Inspection.** A physical inspection by City staff or the City's designee may be required for any application that involves: (i) a new facility on a new or replacement structure; (ii) any modification to an existing facility if no physical inspection has occurred in the last 12-month period; (iii) any request for an exception pursuant to Section 13 of this Policy. This paragraph does not limit the City's ability to conduct inspections at the Director's discretion.
- (e) **Incomplete Applications Deemed Withdrawn.** Any application governed under this Policy shall be automatically deemed withdrawn by the applicant when the applicant fails to submit a substantive response to the Director within 60 calendar days after the Director deems the application incomplete by written notice. As used in this Subsection (e), a "substantive response" must include, at a minimum, the complete materials identified as incomplete in the written incomplete notice.
- (f) **Additional Administrative Requirements and Regulations.** The City Council authorizes the Director to develop, publish and from time to time update or amend permit application requirements, forms, checklists, guidelines, informational handouts and other related materials that the Director finds necessary, appropriate or useful for processing any application governed under this policy so long as such updates or amendments do not diminish any requirement provided in this Policy. The City Council further authorizes the Director to establish other reasonable rules and regulations for duly filed applications, which may include without limitation regular hours for appointments and/or submittals without appointments, as the Director deems necessary or appropriate to organize, document and manage the application intake process. All such requirements, materials, rules and regulations must be in written form and publicly stated to provide all interested parties with prior notice.
- (g) **Fire Department Review.** After submittal by the applicant, the Director shall transmit the entire application packet to the Fire Prevention Division. The Fire Chief shall review the application for compliance with objective health and safety standards related to fire hazards, including but not limited to all applicable provisions in Title 10 of the Encinitas Municipal Code. The Fire Chief shall inform the Director in writing of its conclusions and any recommended conditions for public health and safety.
- (h) **Peer and Independent Consultant Review.** The City Council authorizes the Director to, in the Director's discretion, select and retain an independent consultant with specialized

training, experience and/or expertise in telecommunications issues satisfactory to the Director in connection any permit application. The Director may request an independent consultant review on any issue that involves specialized or expert knowledge in connection with wireless facilities deployment or permit applications for wireless facilities, which include without limitation: (a) permit application completeness and/or accuracy, including performing a drive test or other form of reception testing to determine whether the proposed facility is necessary to achieve the applicant's objectives as may be required in order to determine the necessity of an exception pursuant to Section 13; (b) pre-construction planned compliance with applicable regulations for human exposure to RF emissions; (c) post-construction actual compliance with applicable regulations for human exposure to RF emissions; (d) whether and to what extent a proposed project will comply with applicable laws; (e) the applicability, reliability and/or sufficiency of any information, analyses or methodologies used by the applicant to reach any conclusions about any issue with the City's discretion to review; and (f) any other issue identified by the Director that requires expert or specialized knowledge, including without limitation any issues related to an exception requested by the applicant pursuant to Section 13 of this Policy. Until such time as the City hires staff possessing specialized expertise described in this paragraph, the City generally may be required to hire an independent consultant in connection with any application. The Director may request that the independent consultant prepare written reports, testify at public meetings, hearings and/or appeals and attend meetings with City staff and/or the applicant. Subject to applicable law, in the event that the Director elects to retain an independent consultant in connection with any permit application, the applicant shall be responsible for the reasonable costs in connection with the services provided, which may include without limitation any costs incurred by the independent consultant to attend and participate in any meetings or hearings. Before the independent consultant may perform any services, the applicant shall tender to the City a deposit in an amount equal to the estimated cost for the services to be provided, as determined by the Director until the City adopts the initial required deposit by fee schedule. The Director may request additional deposits as reasonably necessary to ensure sufficient funds are available to cover the reasonable costs in connection with the independent consultant's services. In the event that the deposit exceeds the total costs for consultant's services, the Director shall promptly return any unused funds to the applicant after the wireless facility has been installed and passes a final inspection by the Director or his or her designee. In the event that the reasonable costs for the independent consultant's services exceed the deposit, the Director shall invoice the applicant for the balance. The City shall not issue any construction or encroachment permit to any applicant with any unpaid deposit requests or invoices. In addition, the Fire Chief (or his or her designee) has the explicit authority to select and retain an independent consultant with expertise and/or specialized training in fire safety and fire hazard mitigation and prevention satisfactory to the Fire Chief in connection with any permit application. The Fire Chief may request independent consultant review on any matter committed to Fire Department review or approval. Subject to applicable law, in the event that the Fire Chief elects to retain an independent consultant in connection with any permit application, the applicant shall be responsible for the reasonable costs in connection with the services provided, which may include without limitation any costs incurred by the independent consultant to attend and participate in any meetings or hearings. The same procedures for fee deposits, cost reimbursements and refunds to the applicant as described above shall be applicable to independent consultant review required by the Fire Chief.

- (i) **Batched Applications.** Applicants may submit up to five individual applications for a small wireless facility permit in a batch; provided, however, that small wireless facilities in a batch must be proposed with substantially the same equipment in the same configuration

on the same support structure type. Each application in a batch must meet all the requirements for a complete application, which includes without limitation the application fee for each application in the batch. If any application in a batch is incomplete, the Director, in the Director's discretion, shall determine whether the entire batch shall be deemed incomplete. If any application is withdrawn or deemed withdrawn from a batch, the Director shall determine whether the entire batch shall be deemed withdrawn. If any application in a batch fails to meet the required findings for approval, the Director shall Determine whether the entire batch shall be denied.

- (j) **City Staff Time for Review.** City staff, including the Fire Prevention Division, shall take the appropriate amount of time necessary to complete review of an application. If it is anticipated that additional time is required, staff should document the unusual circumstances justifying additional time and the Director should contact the applicant to attempt to enter into a tolling agreement to avoid legal uncertainty.

SECTION 7. PUBLIC NOTICES

- (a) **Application Submittal Notice.** Within 3 business days after an application is received and prior to any approval, conditional approval or denial, the City shall mail public notice to all persons entitled to notice. The notice must contain: (1) a general project description; (2) the applicant's identification and contact information as provided on the application submitted to the City; (3) contact information for the Director for interested parties to submit comments; (4) a statement that the Director will act on the application without a public hearing but that any interested person or entity may appeal the Director's decision directly to the City Council; (5) if the application is for a small wireless facility, a general statement that the FCC requires the City to take final action on such applications within 60 days for collocations and 90 days for facilities on new support structures; and (6) a statement that any person that wishes to seek a reasonable accommodation under the Americans with Disabilities Act, Fair Housing Act Amendments of 1988, or other applicable state or federal law may do so in accordance with the City's standard disability accommodation process and such requests shall be kept confidential per California Code of Regulations, Title 2, Section 12176(b). Within 3 business days of the City's mailing of the above public notice, the applicant, with the approval from the proposed site owner, shall provide proof to the City that the applicant posted a copy of the above public notice on the proposed site.
- (b) **Public Information.** Individuals desiring to receive e-mail notifications regarding pending and completed applications may do so by email request to the Development Services Department. Information regarding the location and status of proposed and active wireless facilities, and applicant contact information and applicable City code enforcement personnel, shall also be posted the City's website.
- (c) **Application Decision Notice.** Within five calendar days after the Director acts on a ROW administrative design review permit application, the Director shall provide written notice to the applicant and all persons entitled to notice. If the Director denies an application (with or without prejudice) for a small wireless facility, the written notice must also contain the reasons for the denial.

SECTION 8. DECISIONS

- (a) **Initial Administrative Decision.** Not more than 29 shot clock days after the application has been deemed complete, the Director shall approve, conditionally approve or deny a complete and duly filed ROW administrative design review permit application without a public hearing. Failure of the Director to comply with the timetable in this paragraph shall not affect the Director's authority to approve or deny any permit.
- (b) **Required Findings for Approval.** The Director may approve or conditionally approve a complete and duly filed application for a ROW administrative design review permit when the Director finds:
 - (1) the proposed project complies with all applicable design and location standards in this Policy and all applicable laws;
 - (2) the proposed project would be in the most preferred location pursuant to Section 10(b) within 500 feet from the proposed site in any direction or the applicant has demonstrated with clear and convincing evidence in the written record that any more-preferred location(s) within 500 feet would be technically infeasible;
 - (3) the proposed project would not be located on a prohibited support structure identified in this Policy;
 - (4) the proposed project would be on the most preferred support structure within 500 feet from the proposed site in any direction or the applicant has demonstrated with clear and convincing evidence in the written record that any more-preferred support structure(s) within 500 feet would be technically infeasible;
 - (5) if the proposed project involves a wireless facility, the proposed project fits within the definition for a "small wireless facility" as defined by the FCC;
 - (6) if the proposed project involves a wireless facility, the applicant has demonstrated that the proposed project will be in planned compliance with all applicable FCC regulations and guidelines for human exposure to RF emissions;
 - (7) the proposed project has been reviewed and approved or conditionally approved by the Fire Chief in accordance with Section 6(g) of this Policy;
 - (8) all public notices required for the application have been given; and
 - (9) the applicant provided a complete application or the application was deemed complete by operation of law.
- (c) **Conditional Approvals; Denials Without Prejudice.** Subject to any applicable federal or California laws, nothing in this Policy is intended to limit the Director's ability to conditionally approve or deny without prejudice any ROW administrative design review permit application as may be necessary or appropriate to ensure compliance with this Policy.
- (d) **Appeals.** Any interested person or entity may appeal the decision by the Director to the City Council; provided, however, that appeals from an approval shall not be permitted

when based solely on the environmental effects from RF emissions that are compliant with applicable FCC regulations and guidelines. An appeal notice must be filed within seven calendar days after the date on the Director's decision notice. The notice must contain a short and plain statement about the basis for the appeal, which may be supplemented after the notice period has expired but before the appeal hearing. The City Council shall hear appeals *de novo* and issue the applicant and any person entitled to notice a written decision within five calendar days after the appeal hearing. If the City Council denies the application on appeal (whether by affirmation or reversal), the written notice shall contain the reasons for the decision.

SECTION 9. CONDITIONS OF APPROVAL

- (a) **Standard Conditions.** Except as may be authorized in subsection (b), all ROW administrative design review permits issued under this Policy shall be automatically subject to the conditions in this subsection (a).
- (1) **Permit Term.** This permit will automatically expire 10 years and one day from its issuance unless California Government Code § 65964(b) authorizes the City to establish a shorter term for public safety reasons. Any other permits or approvals issued in connection with any collocation, modification or other change to this wireless facility, which includes without limitation any permits or other approvals deemed-granted or deemed-approved under federal or state law, will not extend this term limit unless expressly provided otherwise in such permit or approval or required under federal or state law. The Director may establish a shorter permit term if (i) the Fire Chief concludes that the proposed wireless facility presents a potential fire hazard and (ii) the potential fire hazard cannot be mitigated by changes to the facility or other conditions.
 - (2) **Permit Renewal.** The permittee may apply for permit renewal not more than one year before this ROW administrative design review permit expires. The permittee must demonstrate that the subject small wireless facility or other infrastructure deployment complies with all the conditions of approval associated with this ROW administrative design review permit and all applicable provisions in the Encinitas Municipal Code and this Policy that exists at the time the decision to renew or not renew is rendered. The Director may modify or amend the conditions on a case-by-case basis as may be necessary or appropriate to ensure compliance with the Encinitas Municipal Code, this Policy or other applicable law. Upon renewal, this ROW administrative design review permit will automatically expire 10 years and one day from its issuance unless issued for a shorter term pursuant to Section 9(a)(1).
 - (3) **Post-Installation Certification.** Within 60 calendar days after the permittee commences full, unattended operations of a small wireless facility or other infrastructure deployment approved or deemed-approved, the permittee shall provide the Director with documentation reasonably acceptable to the Director that the small wireless facility or other infrastructure deployment has been installed and/or constructed in strict compliance with the approved construction drawings and photo simulations. Such documentation shall include without limitation as-built drawings, GIS data and site photographs and may be reviewed for compliance by an independent consultant retained by the City pursuant to Section 6(h).

- (4) **Build-Out Period.** This ROW administrative design review permit will automatically expire 12 months from the approval date (the "build-out period") unless the permittee obtains all other permits and approvals required to install, construct and/or operate the approved small wireless facility or other infrastructure deployment, which includes without limitation any permits or approvals required by any federal, state or local public agencies with jurisdiction over the subject property, support structure or the small wireless facility or other infrastructure deployment and its use. The permittee may request in writing, and the City may grant in writing, one six-month extension if the permittee submits substantial and reliable written evidence demonstrating justifiable cause for a six-month extension. If the build-out period and any extension finally expire, the permit shall be automatically void but the permittee may resubmit a complete application, including all application fees, for the same or substantially similar project.
- (5) **Site Maintenance.** The permittee shall keep the site, which includes without limitation any and all improvements, equipment, structures, access routes, fences and landscape features, in a neat, clean and safe condition in accordance with the approved construction drawings and all conditions in this ROW administrative design review permit. The permittee shall keep the site area free from all litter and debris at all times. The permittee, at no cost to the City, shall remove and remediate any graffiti or other vandalism at the site within 48 hours after the permittee receives notice or otherwise becomes aware that such graffiti or other vandalism occurred. All portions of the facility where the RF emission levels are in compliance with FCC "occupational/controlled exposure" levels but exceeded FCC "general population/uncontrolled exposure" levels must be marked with the appropriate signage.
- (6) **Compliance with Laws.** The permittee shall maintain compliance at all times with all federal, state and local statutes, regulations, orders or other rules that carry the force of law ("laws") applicable to the permittee, the subject property, the small wireless facility or other infrastructure deployment or any use or activities in connection with the use authorized in this ROW administrative design review permit, which includes without limitation any laws applicable to human exposure to RF emissions and any standards, specifications or other requirements identified by the Director (such as, without limitation, those requirements affixed to an encroachment permit). If the Director at any time finds good cause to believe that the facility is not in compliance with any laws applicable to human exposure to RF emissions, the Director may (a) require the permittee to submit a written report certified by a qualified radio frequency engineer familiar with the facility that certifies that the facility is in compliance with all such laws; or (b) require that an RF field test be conducted by an independent consultant (see Section 6(h)) without notice to the permittee, the cost of which shall be borne by the permittee. The Director shall require an onsite compliance test in situations where applicable federal laws would authorize the City to require an such testing at the permittee's expense. All on-site tests for compliance with the FCC's RF exposure regulations shall be conducted: (1) by an independent third party selected by the Director; (2) at random times, except when the test is conducted prior to unattended operation in which case the test will be at a time when the facility is operated at maximum power; and (3) using state-of-the-art methods and instruments appropriate for the technology involved. The Director may order the facility to be immediately powered down if, based on objective evidence, the Director finds that the facility is in fact not in compliance with any laws applicable including laws applicable to RF

emissions until such time that the permittee demonstrates actual compliance with such laws. The permittee expressly acknowledges and agrees that this obligation is intended to be broadly construed and that no other specific requirements in these conditions are intended to reduce, relieve or otherwise lessen the permittee's obligations to maintain compliance with all laws. No failure or omission by the City to timely notice, prompt or enforce compliance with any applicable provision in the Encinitas Municipal Code, this Policy, any permit, any permit condition or any applicable law or regulation, shall be deemed to relieve, waive or lessen the permittee's obligation to comply in all respects with all applicable provisions in the Encinitas Municipal Code, this Policy, any permit, any permit condition or any applicable law or regulation.

- (A) **Copies of CPUC Notification Letters.** Within 15 business days of issuance of permit, permittee shall serve of copies of California Public Utility Commission notification letters to City Clerk, Director and City Manager, as required by CPUC General Order No. 159A § (IV)(C)(2) unless otherwise exempted pursuant to CPUC General Order No. 159A § (IV)(D).
- (7) **Adverse Impacts on Other Properties.** The permittee shall use all reasonable efforts to avoid any and all unreasonable, undue or unnecessary adverse impacts on nearby properties that may arise from the permittee's or its authorized personnel's construction, installation, operation, modification, maintenance, repair, removal and/or other activities on or about the site. The permittee shall not perform or cause others to perform any construction, installation, operation, modification, maintenance, repair, removal or other work that involves heavy equipment or machines except during normal construction work hours authorized by the Encinitas Municipal Code. The restricted work hours in this condition will not prohibit any work required to prevent an actual, immediate harm to property or persons, or any work during an emergency declared by the City or other state or federal government agency or official with authority to declare an emergency within the City. The Director may issue a stop work order for any activities that violates this condition in whole or in part. If the Director finds good cause to believe that ambient noise from a facility violates applicable provisions in the Encinitas Municipal Code, the Director may, in addition to any other actions or remedies authorized by the permit, the Encinitas Municipal Code or other applicable laws, require the permittee to commission a noise study by a qualified professional to evaluate the facility's compliance. The permittee shall, at its sole cost and expense, repair and restore any and all damages to public and private properties that result from any activities performed in connection with the installation or maintenance of a small wireless facility in the public right-of-way. The permittee shall restore such areas, structures and systems to the condition in which they existed prior to the installation or maintenance that necessitated the repairs. In the event the permittee fails to complete such repair within the number of days stated on a written notice by the City Manager or designee, the City Manager or designee shall cause such repair to be completed at permittee's sole cost and expense.
- (8) **Permittee Cooperation.** Permittee agrees to promptly cooperate with the City in assisting the City to achieve its accommodation obligations under the Americans with Disabilities Act, the Fair Housing Act Amendments of 1988 and other applicable laws.

- (9) **Inspections; Emergencies.** The permittee expressly acknowledges and agrees that the City's officers, officials, staff, agents, contractors or other designees may enter onto the site and inspect the improvements and equipment upon reasonable prior notice to the permittee. Notwithstanding the prior sentence, the City's officers, officials, staff, agents, contractors or other designees may, but will not be obligated to, enter onto the site area without prior notice to support, repair, disable or remove any improvements or equipment in emergencies or when such improvements or equipment threatens actual, imminent harm to property or persons. The permittee, if present, may observe the City's officers, officials, staff or other designees while any such inspection or emergency access occurs.
- (10) **Permittee's Contact Information.** Prior to final inspection and at all times relevant to this permit, the permittee shall keep on file with the Director basic contact and site information on a form to be supplied by the City. This information shall include, but is not limited to, the following: (a) the name, physical address, notice address (if different), direct telephone number and email address for (i) the permittee and, if different from the permittee, the (ii) site operator, (ii) equipment owner, (iii) site manager and (iv) agent for service of process; (b) the regulatory authorizations held by the permittee and, to the extent applicable, site operator, equipment owner and site manager as may be necessary for the facility's continued operation; (c) the facility's site identification number and/or name used by the permittee and, to the extent applicable, site operator, equipment owner and site manager; and (d) a toll-free telephone number to the facility's network operations center where a live person with power-down control over the facility is available 24 hours-per-day, seven days-per-week. Within 10 business days after a written request by the City, the permittee shall furnish the City with an updated form that includes all the most-current information described in this condition.
- (11) **Indemnification.** The permittee, each owner or operator of an antenna on the facility, and, if applicable, the property owner upon which the small wireless facility or other infrastructure deployment is installed shall defend, indemnify and hold harmless the City, City Council and the City's boards, commissions, agents, officers, officials, employees and volunteers (collectively, the "indemnitees") from any and all (i) damages, liabilities, injuries, losses, costs and expenses and from any and all claims (including claims on the basis of RF emissions), demands, law suits, writs and other actions or proceedings ("claims") brought against the indemnitees to challenge, attack, seek to modify, set aside, void or annul the City's approval of this ROW administrative design review permit, and (ii) other claims of any kind or form, whether for personal injury, death or property damage, that arise from or in connection with the permittee's or its agents', directors', officers', employees', contractors', subcontractors', licensees' or customers' acts or omissions in connection with this ROW administrative design review permit or the small wireless facility claims (including claims on the basis of RF emissions) or other infrastructure deployment. In the event the City becomes aware of any claims, the City will use best efforts to promptly notify the permittee and the private property owner (if applicable) and shall reasonably cooperate in the defense. The permittee expressly acknowledges and agrees that the City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City's defense, and the property owner and/or permittee (as applicable) shall promptly reimburse the City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. The permittee expressly acknowledges and agrees that the permittee's indemnification

obligations under this condition are a material consideration that motivates the City to approve this ROW administrative design review permit, and that such indemnification obligations will survive the expiration, revocation or other termination of this ROW administrative design review permit.

- (12) **Performance Bond.** Before the City issues any permits required to commence construction in connection with this permit, the permittee shall post a performance bond from a surety and in a form acceptable to the Director in an amount reasonably necessary to cover the cost to remove the improvements and restore all affected areas based on a written estimate from a qualified contractor with experience in wireless facilities or other infrastructure removal. The written estimate must include the cost to remove all equipment and other improvements, which includes without limitation all antennas, radios, batteries, generators, utilities, cabinets, mounts, brackets, hardware, cables, wires, conduits, structures, shelters, towers, poles, footings and foundations, whether above ground or below ground, constructed or installed in connection with the wireless facility, plus the cost to completely restore any areas affected by the removal work to a standard compliant with applicable laws. In establishing or adjusting the bond amount required under this condition, the Director shall take into consideration any information provided by the permittee regarding the cost to remove the small wireless facility or other infrastructure deployment to a standard compliant with applicable laws. The performance bond shall expressly survive the duration of the permit term to the extent required to effectuate a complete removal of the subject wireless facility or other infrastructure deployment in accordance with this condition.
- (13) **Permit Revocation.** Any permit granted under this Policy may be revoked in accordance with the provisions and procedures in this condition. The Director may initiate revocation proceedings when the Director has information that the permittee made material changes to any part of the facility without the City's prior written authorization or that the facility may not be in compliance with all applicable laws, which includes without limitation, any permit in connection with the facility and any associated conditions with such permit(s). Before any public hearing to revoke a permit granted under this Policy, the Director must issue a written notice to the permittee that specifies (i) the facility; (ii) the violation(s) to be corrected; (iii) the timeframe in which the permittee must correct such violation(s); and (iv) that, in addition to all other rights and remedies the City may pursue, the City may initiate revocation proceedings for failure to correct such violation(s). A permit granted under this Policy may be revoked only by the City Council after a duly notice public hearing. The Director shall provide at least 10 days' prior written notice of such public hearing to residents and property owners within 500 feet from the facility. The City Council may revoke a permit when it finds substantial evidence in the written record to show that the facility is not in compliance with any applicable laws, which includes without limitation, any permit in connection with the facility and any associated conditions with such permit(s). Any decision by the City Council to revoke or not revoke a permit shall be final and not subject to any further appeals. Within five business days after the City Council adopts a resolution to revoke a permit, the Director shall provide the permittee with a written notice that specifies the revocation and the reasons for such revocation.
- (14) **Record Retention.** Throughout the permit term, the permittee must maintain a complete and accurate copy of the written administrative record, which includes

without limitation the ROW administrative design review permit application, ROW administrative design review permit, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval, any ministerial permits or approvals issued in connection with this approval and any records, memoranda, documents, papers and other correspondence entered into the public record in connection with the ROW administrative design review permit (collectively, "records"). If the permittee does not maintain such records as required in this condition, any ambiguities or uncertainties that would be resolved by inspecting the missing records will be construed against the permittee. The permittee shall protect all records from damage from fires, floods and other hazards that may cause deterioration. The permittee may keep records in an electronic format; provided, however, that hard copies or electronic records kept in the City's regular files will control over any conflicts between such City-controlled copies or records and the permittee's electronic copies, and complete originals will control over all other copies in any form. The requirements in this condition shall not be construed to create any obligation to create or prepare any records not otherwise required to be created or prepared by other applicable laws. Compliance with the requirements in this condition shall not excuse the permittee from any other similar record-retention obligations under applicable law.

- (15) **Abandoned Facilities.** The small wireless facility or other infrastructure deployment authorized under this ROW administrative design review permit shall be deemed abandoned if not operated for any continuous six-month period. Within 90 days after a small wireless facility or other infrastructure deployment is abandoned or deemed abandoned, the permittee and/or property owner shall completely remove the small wireless facility or other infrastructure deployment and all related improvements and shall restore all affected areas to a condition compliant with all applicable laws, which includes without limitation the Encinitas Municipal Code. In the event that neither the permittee nor the property owner complies with the removal and restoration obligations under this condition within said 90-day period, the City shall have the right (but not the obligation) to perform such removal and restoration with or without notice, and the permittee and property owner shall be jointly and severally liable for all costs and expenses incurred by the City in connection with such removal and/or restoration activities. A permittee shall respond within 15 days in writing to any City inquiry regarding the continued operational status of any facility. Additionally, on or before January 30th of each calendar year, the permittee shall provide the City with a list of all currently operational facilities within the City.
- (16) **Landscaping.** The permittee shall abide by the landscape plan submitted pursuant to Section 6(a)(14) and shall replace and be responsible for the maintenance of any landscape features damaged or displaced by the construction, installation, operation, maintenance or other work performed by the permittee or at the permittee's direction on or about the site in accordance with Section 11(e).
- (17) **Cost Reimbursement.** The permittee acknowledges and agrees that (i) the permittee's request for authorization to construct, install and/or operate the wireless facility will cause the City to incur costs and expenses; (ii) the permittee shall be responsible to reimburse the City for all costs incurred in connection with the permit, which includes without limitation costs related to application review, permit issuance, site inspection and any other costs reasonably related to or

caused by the request for authorization to construct, install and/or operate the wireless facility or other infrastructure deployment; (iii) any application fees required for the application may not cover all such reimbursable costs and that the permittee shall have the obligation to reimburse the City for all such costs 10 days after a written demand for reimbursement and reasonable documentation to support such costs; and (iv) the City shall have the right to withhold any permits or other approvals in connection with the wireless facility until and unless any outstanding costs have been reimbursed to the City by the permittee.

- (18) **Future Undergrounding Programs.** Notwithstanding any term remaining on any ROW administrative design review permit, if other utilities or communications providers in the public rights-of-way underground their facilities in the segment of the public rights-of-way where the permittee's small wireless facility or other infrastructure deployment is located, the permittee must also underground its equipment, except the antennas and any approved electric meter, at approximately the same time. Accessory equipment such as radios and computers that require an environmentally controlled underground vault to function shall not be exempt from this condition. Small wireless facilities and other infrastructure deployments installed on wood utility poles that will be removed pursuant to the undergrounding program may be reinstalled on a streetlight that complies with the City's standards and specifications. Such undergrounding shall occur at the permittee's sole cost and expense except as may be reimbursed through tariffs approved by the state public utilities commission for undergrounding costs.
- (19) **Electric Meter Upgrades.** If the commercial electric utility provider adopts or changes its rules obviating the need for a separate or ground-mounted electric meter and enclosure, the permittee on its own initiative and at its sole cost and expense shall remove the separate or ground-mounted electric meter and enclosure. Prior to removing the electric meter, the permittee shall apply for any encroachment and/or other ministerial permit(s) required to perform the removal. Upon removal, the permittee shall restore the affected area to its original condition that existed prior to installation of the equipment.
- (20) **Rearrangement and Relocation.** The permittee acknowledges that the City, in its sole discretion and at any time, may: (A) change any street grade, width or location; (B) add, remove or otherwise change any improvements in, on, under or along any street owned by the City or any other public agency, which includes without limitation any sewers, storm drains, conduits, pipes, vaults, boxes, cabinets, poles and utility systems for gas, water, electric or telecommunications; and/or (C) perform any other work deemed necessary, useful or desirable by the City (collectively, "City work"). The City reserves the rights to do any and all City work without any admission on its part that the City would not have such rights without the express reservation in this ROW administrative design review permit. If the Director determines that any City work will require the permittee's small wireless facility located in the public rights-of-way to be rearranged and/or relocated, the permittee shall, at its sole cost and expense, do or cause to be done all things necessary to accomplish such rearrangement and/or relocation. If the permittee fails or refuses to either permanently or temporarily rearrange and/or relocate the permittee's small wireless facility or other infrastructure deployment within a reasonable time after the Director's notice, the City may (but will not be obligated to) cause the rearrangement or relocation to be performed at the permittee's sole cost and expense. The City may exercise its rights to rearrange or relocate the

permittee's small wireless facility or other infrastructure deployment without prior notice to permittee when the Director determines that City work is immediately necessary to protect public health or safety. The permittee shall reimburse the City for all costs and expenses in connection with such work within 10 days after a written demand for reimbursement and reasonable documentation to support such costs. Except as may be expressly permitted otherwise, nothing in this permit will be construed to require the City or authorize the permittee to change any street grade, width or location, or add, remove or otherwise change any improvements owned by the City or any other public agency located in, on, under or along the site area or any portion of the public rights-of-way, which includes without limitation any sewers, storm drains, conduits, pipes, vaults, boxes, cabinets, poles and utility systems for gas, water, electric or telecommunications, for the permittee's or any third party's convenience or necessity.

- (21) **Truthful and Accurate Statements.** The permittee acknowledges that the City's approval relies on the written and/or oral statements by permittee and/or persons authorized to act on permittee's behalf. In any matter before the City in connection with the ROW administrative design review permit or the small wireless facility or other infrastructure approved under the ROW administrative design review permit, neither the permittee nor any person authorized to act on permittee's behalf shall, in any written or oral statement, intentionally provide material factual information that is incorrect or misleading or intentionally omit any material information necessary to prevent any material factual statement from being incorrect or misleading.
- (22) **Affirmation of Radio Frequency Standards Compliance.** On or before January 30th in each calendar year, the permittee and each operator or owner of an antenna on the site acknowledges and agrees that the permittee shall submit: (1) an affirmation, under penalty of perjury, that the installation is and will remain FCC compliant, because it will not cause members of the general public to be exposed to RF levels that exceed the maximum permission exposure levels deemed safe by the FCC; (2) a copy of the fully completed FCC form "A Local Government Official's Guide to Transmitting Antenna RF Emission Safety: Rules, Procedures, and Practical Guidance: Appendix A titled "Optional Checklist for Determination of Whether a Facility is Categorically Excluded" for each frequency band of RF emissions to be transmitted from the proposed facility upon the approval of the application. All planned radio frequency emissions on all frequency bands must be shown on the Appendix A form(s) attached to the application. All radio frequency emissions are to be entered on each Appendix A form only in wattage units of "effective radiated power." Any facility approved pursuant to this Policy shall automatically become subject to the most stringent RF emission standards that may become allowable by law.
- (23) **Safety Hazard Protocols.** If the Fire Chief (or his or her designee) or Board of Chiefs of the North County Dispatch Joint Powers Authority finds good cause to believe that the facility (including, without limitation, its accessory equipment, antenna and/or base station) presents a fire risk, electrical hazard or other immediate threat to public health and safety in violation of any applicable law, such officials may order the facility to be shut down and powered off until such time as the fire risk or electrical hazard has been mitigated. Any mitigations required shall be at the permittee's sole cost and expense.

(A) Continued Monitoring. The permittee shall certify in writing continued compliance with the safety standards of this policy on or before January 30th of each calendar year. The Fire Chief will continue to monitor the safety of wireless facilities in the City and publish a yearly review of fire safety considerations regarding potential risks posed by electrical components of new technologies, the presence of numerous small cell wireless facilities in the ROW and any fire events or near-miss events related to wireless facilities.

(B) Oversight Authority. The Fire Chief, in his or her discretion, may issue written fire safety performance directives that shall apply to all existing permits within the scope of such directives and shall be considered as though incorporated into such permits. All permittees shall be required to comply with such directives at the permittee's sole cost and expense.

(C) Investigations. (i) The Fire Chief shall receive and investigate any credible fire safety complaint made by a resident of the City regarding a wireless facility in the City. Cost of such investigation shall be borne by the permittee. Permittees shall also inform the Fire Chief in writing within one business day of any fire or near-ignition event at any facility or replacement of any facility component in connection with any malfunction pertaining to excess heat, sparking or discharged current. (ii) The Fire Chief shall further investigate any fire in or around the vicinity of a small cell wireless facility. If the conclusion of the investigation is that any facility component is at fault, the Fire Chief shall promptly notify the Encinitas City Council of his/her findings, and the facility at issue shall be immediately powered down until such time as the permittee provides assurances or undertakes precautions satisfactory to the Fire Chief that such event or similar event will not reoccur. In the event that no such assurance is received, and the Fire Chief has good cause to believe that such failure to comply constitutes a threat to health or safety, the Fire Chief may recommend permit revocation to the Director pursuant to the procedures in Section 9(a)(13) and removal pursuant to Section 9(a)(15).

(24) **Insurance.** Permittee, and each owner or operator of an antenna on the facility, shall obtain, and at all times relevant to this permit maintain, insurance policies, issued by an insured authorized to do business in the State of California and reasonably acceptable to the City Risk Manager, at least as broad as follows:

(A) **Commercial General Liability.** Insurance Services Office Form CG 00 01 covering Commercial General Liability ("CGL") on an "occurrence" basis, with limits not less than \$2,000,000 per occurrence per wireless carrier or \$4,000,000 per wireless carrier in the aggregate. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. CGL insurance must include coverage for the following: Bodily Injury and Property Damage; Personal Injury/Advertising Injury; Premises/Operations Liability; Products/Completed Operations Liability; Aggregate Limits that Apply per Project; Explosion, Collapse and Underground ("UCX") exclusion deleted; Contractual Liability with respect to the permit; Broad Form Property Damage; and Independent Consultants Coverage. The policy shall contain no endorsements or provisions limiting coverage for (i) contractual liability; (ii) cross liability exclusion for claims or suits by one insured against another; (iii) products/completed operations

liability; (iv) bodily injury or damage from RF exposure at levels exceeding the FCC limits; or (v) contain any other exclusion contrary to the conditions in this permit.

- (B) **Automotive Insurance.** Insurance Services Office Form Number CA 00 01 covering, Code 1 (any auto), or if permittee has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
- (C) **Workers' Compensation.** The permittee shall certify that it is aware of the provisions of California Labor Code § 3700, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and further certifies that the permittee will comply with such provisions before commencing work under this permit. To the extent the permittee has employees at any time during the term of this permit, at all times during the performance of the work under this permit the permittee shall maintain insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
- (D) **Errors and Omissions Policy.** The permittee shall maintain Professional Liability (Errors and Omissions) Insurance appropriate to the permittee's profession, with limit no less than \$1,000,000 per occurrence or claim. This insurance shall be endorsed to include contractual liability applicable to this permit and shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the permittee. "Covered Professional Services" as designed in the policy must specifically include work performed under this permit.
- (E) **Environmental Pollution Liability Insurance.** The permittee shall procure and maintain at its expense or cause its contractor or subcontractor to procure and maintain throughout the term of this permit, Contractors Pollution Liability Insurance including contractual liability coverage to cover liability and legal expenses arising out of cleanup, removal, storage, or handling of hazardous or toxic chemicals, materials, substances, or any other pollutants by the permittee or any subcontractor resulting from pollution conditions associated with the facility in an amount not less than \$1,000,000 each occurrence combined single limit for bodily injury and property damage.
- (F) **Umbrella Policy.** If an umbrella or excess liability insurance policy is used to satisfy the minimum requirements for CGL or Automobile Liability insurance coverage listed above, the umbrella or excess liability policies shall provide coverage at least as broad as specified for the underlying coverages and covering those insured in the underlying policies. Coverage shall be "pay on behalf," with defense costs payable in addition to policy limits. Permittee shall provide a "follow form" endorsement or schedule of underlying coverage satisfactory to the City indicating that such coverage is subject to the same terms and conditions as the underlying liability policy.

- (G) **Endorsements.** The relevant policy(ies) shall name the City, its elected/appointed officials, commission members, officers, representatives, agents, volunteers and employees as additional insureds. The permittee shall use its best efforts to provide thirty (30) days' prior notice to the City of the cancellation or material modification of any applicable insurance policy.
- (H) **Verification of Coverage.** Permittee shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language providing the insurance coverage required herein. All certificates and endorsements are to be received and approved by the City before any work commences. However, failure to obtain required documents prior to the work beginning shall not waive the Licensee's obligation to provide them. Permittee shall furnish updated certificates and endorsements to the City annually. The City reserves the right to require updated certificates and endorsements or complete, certified copies of all required insurance policies, including the endorsements required herein, at any time.
- (25) **Successors and Assigns.** The conditions, covenants, promises and terms contained in this permit will bind and inure to the benefit of the City and permittee and their respective successors and assigns.
- (26) **Severability of Conditions.** If any provision in these conditions or such provision's application to any person, entity or circumstances is or held by any court with competent jurisdiction to be invalid or unenforceable: (1) such provision or its application to such person, entity or circumstance will be deemed severed from this permit; (2) all other provisions in this permit or their application to any person, entity or circumstance will not be affected; and (3) all other provisions in this permit or their application to any person, entity or circumstance will be valid and enforceable to the fullest extent permitted by law.
- (27) **City's Standing Reserved.** The City's grant or grant by operation of law of a permit pursuant to this Policy does not waive, and shall not be construed to waive, any standing by the City to challenge any FCC rules that interpret the Telecommunications Act, the Spectrum Act or any permit issued pursuant to this Policy.
- (b) **Modified Conditions; Permits Conditional.** The City Council authorizes the Director to modify, add or remove conditions to any ROW administrative design review permit as the Director deems necessary or appropriate to: (1) protect and/or promote the public health, safety and welfare; (2) tailor the standard conditions in subsection (a) to the particular facts and circumstances associated with the deployment; and/or (3) memorialize any changes to the proposed deployment need for compliance with the Encinitas Municipal Code, this policy, generally applicable health and safety requirements and/or any other applicable laws. In the event of a change in any state or federal law affecting this Policy, including judicial decisions applicable to such laws, all permits issued pursuant to this Policy shall be reviewed and modified by the Director to maximally effectuate the objectives of this Policy as determined by the Director.

- (c) **Facilities Review following Change of Law.** But for restrictions imposed by state and/or federal law, which includes regulations promulgated by the FCC, the City would not approve any facility unless such facility was the least intrusive means to mitigate a significant gap in the provider's service. Following any change of laws as described in Section 9(b) that would restore the City's authority to enforce such restrictions, at permittees' sole cost and expense, the Director may direct the City's expert to identify any facilities that are not necessary to mitigate a gap in the permittee's service or are not the least intrusive means to mitigate such a gap. The Director shall adopt or reject, or adopt or reject with respect to specific facilities, the opinion of the expert within five days of such expert report having been submitted to the Director, which shall be made public on the applicable City website. If the director determined that a facility is not necessary to mitigate a gap and/or not the least intrusive means to do so, the Director shall notify the permittee in writing of the determination and commence revocation hearings and proceedings. The Director shall provide at least 10 days' prior written notice of such public hearing to residents and property owners within 500 feet from the facility. The City Council may revoke a permit when it finds substantial evidence in the written record to show that the facility is not necessary to fill a gap in coverage and/or not the least intrusive means to do so. Any decision by the City Council to revoke or not revoke a permit shall be final and not subject to any further appeals. Within five business days after the City Council adopts a resolution to revoke a permit, the Director shall provide the permittee with a written notice that specifies the revocation and the reasons for such revocation. Existing permittees subject to revocation and new applicants will be eligible to seek a new permit as conditional use permit (major) under Chapter 30.74 of the Municipal Code.

SECTION 10. LOCATION STANDARDS

- (a) **Restricted Site Locations.** All of the following locations will be deemed "Restricted Site Locations" that require an exception pursuant to Section 13 of this Policy:
- (1) any location within a residential zone;
 - (2) any location within 500 feet from a residential dwelling unit;
 - (3) any location within 500 feet from a daycare facility or school;
 - (4) any location within a Very High Fire Hazard Severity Zone;
 - (5) any location within the Ecological Resource/Open Space/Park Zone;
 - (6) any location within 100 feet from the inland sand line or bluff line;
 - (7) any location within 250 feet from any federal, state or local historic landmark;
 - (8) any location with 100 feet from a Scenic Vista Point as designated in the Encinitas General Plan.
- (b) **Location Preferences.** To better assist applicants and decision makers understand and respond to the community's aesthetic preferences and values, this subsection sets out listed preferences for locations to be used in connection with small wireless facilities in an ordered hierarchy. Applications that involve lesser-preferred locations may be approved so long as the applicant demonstrates by clear and convincing evidence in the written

record that: (1) any more preferred locations or structures within 500 feet from the proposed site would be technically infeasible; and (2) if the proposed site or the most-preferred location within 500 feet from the proposed site is within a Restricted Site Location, the applicant qualifies for an exception pursuant to Section 13 of this Policy. The City requires small cells in the public rights-of-way to be installed in locations, ordered from most preferred to least preferred, as follows:

- (1) locations within industrial zones, commercial zones, business parks or office professional zones on or along prime arterials;
- (2) locations within industrial zones, commercial zones, business parks or office professional zones on or along major arterials;
- (3) locations within industrial zones, commercial zones, business parks or office professional zones on or along collector roads;
- (4) locations within industrial zones, commercial zones, business parks or office professional zones on or along local streets;
- (5) any location within 1,000 feet from an existing/proposed small wireless facility;
- (6) any location not less than 500 feet from any Restricted Site Location (as defined in Section 10(a) above);
- (7) locations within residential zones on or along prime arterials;
- (8) locations within residential zones on or along major arterials;
- (9) locations within residential zones on or along collector roads;
- (10) locations within residential zones on or along local streets.

To minimize visual clutter, the collocation of any facility within a location class identified in subsection (b) above is more preferred than non-collocation within that same class (without simultaneously being located in a lower priority class) so long as collection can be achieved within existing shrouding and without sacrificing achievement of the objectives in Section 11.

In the event that a proposed facility would be within 500 feet a residence, the technically feasible location furthest from all residences will be deemed to be the most preferred alternative. In the event that a proposed facility would be located within a Restricted Site Location (as defined in Subsection 10(a)), and the proposed facility qualifies for an exception pursuant to Section 13 of this Policy, the technically must be located in the feasible location of highest priority class while not simultaneously located in a lower priority class pursuant to this subsection (b).

- (c) **Encroachments Over Private Property.** No small cell antennas, accessory equipment or other improvements may encroach onto or over any private or other property outside the public rights-of-way without the property owner's express written consent.

- (d) **No Interference with Other Uses.** Small cells and any associated antennas, accessory equipment or improvements shall not be located in any place or manner that would physically interfere with or impede access to any: (1) worker access to any above-ground or underground infrastructure for traffic control, streetlight or public transportation, including without limitation any curb control sign, parking meter, vehicular traffic sign or signal, pedestrian traffic sign or signal, barricade reflectors; (2) access to any public transportation vehicles, shelters, street furniture or other improvements at any public transportation stop; (3) worker access to above-ground or underground infrastructure owned or operated by any public or private utility agency; (4) fire hydrant or water valve; (5) access to any doors, gates, sidewalk doors, passage doors, stoops or other ingress and egress points to any building appurtenant to the rights-of-way; or (6) access to any fire escape.
- (e) **Replacement Pole Location.** All replacement poles must: (1) be located as close to the removed pole as possible; (2) be aligned with the other existing poles along the public rights-of-way; and (3) be compliant with all applicable standards and specifications by the identified or required by the Director.
- (f) **Additional Placement Requirements.** In addition to all other requirements in this Policy, small wireless facilities, other infrastructure deployments and all related equipment and improvements shall:
- (1) be placed as close as possible to the property line between two parcels that abuts the public rights-of-way;
 - (2) not be placed directly in front of any door or window;
 - (3) not be placed within any sight distance triangles at any intersections;
 - (4) not be placed in any location that obstructs view lines for traveling vehicles, bicycles and pedestrian;
 - (5) not be placed in any location that obstructs views of any traffic signs or signals;
 - (6) not be placed in any location that obstructs illumination patterns for existing streetlights;
 - (7) be placed at least 15 feet away from any driveway or established pedestrian pathway between a residential structure and the public rights-of-way;
 - (8) be placed at least 50 feet away from any driveways for police/sheriff's stations, fire stations or other emergency responder facilities;
 - (9) use existing or replacement streetlights rather than wood poles whenever technically feasible; and
 - (10) not require new support structures unless the applicant provides clear and convincing evidence demonstrating that a new support structure is the only technically feasible option to the exclusion of any alternative or reasonable combination of alternatives.

SECTION 11. DESIGN STANDARDS

- (a) **Preface to Design Standards.** The City of Encinitas has a long-standing policy in favor of concealment of personal wireless service facilities (see Encinitas Municipal Code Chapter 9.70) to mitigate the adverse aesthetic impacts on the community from unsightly infrastructure. More recent FCC regulations require local aesthetic requirements to be (1) reasonable, which the FCC defines as technically feasible and directed at avoiding aesthetic harm; (2) no more burdensome than those applied to similarly situated deployments; (3) objective; and (4) published in advance. This Section 11 contains aesthetic regulations that reflect the City's concealment policies through requirements that conform to the FCC's limitations.

Aesthetics depend largely on context and mitigating aesthetic harm from continuously evolving wireless technologies under rigid federal limitations presents a significant challenge. To aid staff, applicants and other stakeholders interpret the design standards in this Section 11 and better understand the City's design objectives, this Section 11(a) sets out general principles that should be considered when applying the specific design standards:

- (1) Antennas, accessory equipment and support structures should be concealed and be in harmony with surroundings. Applicants should utilize all practical means to conceal or minimize the number of facilities and reduce their visual impact, which includes, without limitation using replacement poles designed to be in keeping with the neighborhood aesthetic.
 - (2) Applicants should use building materials, colors and textures designed to harmonize with the natural surroundings and integrate equipment into existing or replacement structures so as to render the facility substantially invisible, or as nearly invisible as reasonably feasible.
 - (3) Antennas, accessory equipment and support structures should be the smallest and as low-profile as technically feasible, taking into considerations the best available solutions for the technologies used in the applicant's deployment.
 - (4) Pole-mounted antennas and accessory equipment should be installed in a manner than minimizes horizontal projections, which includes, without limitation, installing equipment within the pole or as flush to the pole as possible.
 - (5) Support structures and attachments thereto should be the lowest possible height and no taller than similarly situated structures in the vicinity.
 - (6) Non-antenna accessory equipment should be placed underground whenever possible.
 - (7) Surface-mounted accessory equipment should not reduce passable sidewalk space and should be screened with existing or new landscape features, or placed within existing or replacement street furniture, such as benches, bus shelters or kiosks.
- (b) **Finishes.** All exterior surfaces shall be painted, colored and/or wrapped in flat, nonreflective hues that match the underlying support structure or blend with the surrounding environment. All surfaces shall be treated with graffiti-resistant sealant. All finishes shall be subject to the Director's prior approval.

- (c) **Noise.** Small cells and all associated antennas, accessory equipment and other improvements must comply with all applicable noise control standards and regulations in the Encinitas Municipal Code Chapter 9.32 and shall not exceed, either on an individual or cumulative basis, the noise limit in the applicable zone.
- (d) **Lights.** All streetlights and streetlight fixtures must be aimed and shielded so that their illumination effects are directed downwards and confined within the public rights-of-way in a manner consistent with any other standards and specifications by the as identified or required by the Director. All antennas, accessory equipment and other improvements with indicator or status lights must be installed in locations and within enclosures that eliminate illumination impacts visible from publicly accessible areas.
- (e) **Trees and Landscaping.** Small wireless facilities and other infrastructure deployments shall not be installed (in whole or in part) within any tree drip line. Small wireless facilities and other infrastructure deployments may not displace any existing tree or landscape features unless: (A) such displaced tree or landscaping is replaced with native and/or drought-resistant trees, plants or other landscape features approved by the Director and (B) the applicant submits and adheres to a landscape maintenance plan. Only International Society of Arboriculture certified workers under a licensed arborist's supervision shall be used to install the replacement tree(s). Any replacement tree must be substantially the same size as the damaged tree unless approved by the Director. The permittee shall, at all times, be responsible to maintain any replacement landscape features.
- (f) **Signs and Advertisements.** All small wireless facilities and other infrastructure deployments that involve RF transmitters must include signage that accurately identifies the site owner/operator, the owner/operator's site name or identification number and a toll-free number to the owner/operator's network operations center. Small wireless facilities and other infrastructure deployments may not bear any other signage or advertisements unless expressly approved by the City, required by law or recommended under FCC or other United States governmental agencies for compliance with RF emissions regulations.
- (g) **Site Security Measures.** Small wireless facilities and other infrastructure deployments may incorporate reasonable and appropriate site security measures, such as locks and anti-climbing devices, to prevent unauthorized access, theft or vandalism. The Director shall not approve any barbed wire, razor ribbon, electrified fences or any similarly dangerous security measures. All exterior surfaces on small wireless facilities shall be constructed from or coated with graffiti-resistant materials. Cabinets and equipment shroud must be kept secured to prevent unauthorized access.
- (h) **Compliance with Health and Safety Regulations.** All small wireless facilities and other infrastructure deployments shall be designed, constructed, operated and maintained in compliance with all generally applicable health and safety regulations, which includes without limitation all applicable regulations for human exposure to RF emissions and compliance with the federal Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 *et seq.*), the Fair Housing Act Amendments of 1988 and any other applicable disability/handicap accommodation laws.
- (i) **Antennas.** The provisions in this subsection (h) are generally applicable to all antennas.

- (1) **Shrouding.** All antennas and associated cables, jumpers, wires, mounts, masts, brackets and other connectors and hardware must be installed within a single shroud or radome. For pole-top antennas, the shroud shall not exceed 2.5 times the median pole diameter and must taper down to pole. For side-arm antennas, the shroud must cover the cross arm and any cables, jumpers, wires or other connectors between the vertical riser and the antenna.
 - (2) **Antenna Volume.** Each individual antenna associated with a single small cell shall not exceed three cubic feet. The cumulative volume for all antennas on a single small cell shall not exceed: (A) three cubic feet in residential areas; or (B) six cubic feet in nonresidential areas.
 - (3) **Overall Height.** No antenna may extend more than five feet above the support structure, plus any minimum separation between the antenna and other pole attachments required by applicable health and safety regulations.
 - (4) **Horizontal Projection.** Side-mounted antennas, where permitted, shall not project: (A) more than 24 inches from the support structure; (B) over any roadway for vehicular travel; or (C) over any abutting private property. If applicable laws require a side-mounted antenna to project more than 24 inches from the support structure, the projection shall be no greater than required for compliance with such laws.
- (j) **Accessory Equipment Volume.** The cumulative volume for all accessory equipment for a single small wireless facility or other infrastructure deployment shall not exceed: (A) seven cubic feet to the extent feasible, but in no event greater than nine cubic feet in residential areas, or (B) 12 cubic feet in nonresidential areas. The volume limits in this subsection do not apply to any undergrounded accessory equipment.
- (k) **Undergrounded Accessory Equipment.**
- (1) **Where Required.** Accessory equipment (other than any electric meter (where permitted) and an emergency disconnect switch) shall be placed underground when proposed in any (A) underground utility district or (B) any location where the Director finds substantial evidence that the additional above-ground accessory equipment would incommode the public's uses in the public rights-of-way. Notwithstanding the preceding sentence, the Director may grant an exception when the applicant demonstrates by clear and convincing evidence that compliance with this section would be technically infeasible.
 - (2) **Vaults.** All undergrounded accessory equipment must be installed in an environmentally controlled vault that is load-rated to meet the City's standards and specifications. Underground vaults located beneath a sidewalk must be constructed with a slip-resistant cover and properly secured to prevent unauthorized access. Vents for airflow shall be flush-to-grade when placed within the sidewalk and may not exceed two feet above grade when placed off the sidewalk. Vault lids shall not exhibit logos or commercial advertisements.
- (l) **Pole-Mounted Accessory Equipment.** The provisions in this subsection (k) are applicable to all pole-mounted accessory equipment in connection with small wireless facilities and other infrastructure deployments.

- (1) **Preferred Concealment Techniques.** Applicants should propose to place any pole-mounted accessory equipment in the least conspicuous position under the circumstances presented by the proposed pole and location. In general, the least conspicuous position will be the one where the equipment is above eye level and the pole obstructs the equipment from prominent views. Any uncertainty about the least conspicuous position shall be resolved by the Director. Pole-mounted accessory equipment may be installed behind street, traffic or other signs to the extent that the installation complies with applicable public health and safety regulations.
 - (2) **Minimum Vertical Clearance.** The lowest point on any pole-mounted accessory equipment shall be at least 10 feet above ground level adjacent to the pole. If applicable laws require any pole-mounted accessory equipment component to be placed less than 10 feet above ground level, the clearance from ground level shall be no less than required for compliance with such laws.
 - (3) **Horizontal Projection.** Pole-mounted accessory equipment shall not project: (i) more than 18 inches from the pole surface; (ii) over any roadway for vehicular travel; or (iii) over any abutting private property. All pole-mounted accessory equipment shall be mounted flush to the pole surface. If applicable laws preclude flush-mounted equipment, the separation gap between the pole and the accessory equipment shall be no greater than required for compliance with such laws and concealed by opaque, weatherproof material (such as cabinet "flaps" or "wings") that matches the color and texture of the pole.
 - (4) **Orientation.** Unless placed behind a street sign or some other concealment that dictates the equipment orientation on the pole, all pole-mounted accessory equipment should be oriented away from prominent views. In general, the proper orientation will likely be toward the street to reduce the overall profile when viewed from the nearest abutting properties. If orientation toward the street is not feasible, then the proper orientation will most likely be away from oncoming traffic. If more than one orientation would be technically feasible, the Director may select the most appropriate orientation.
- (m) **Ground-Mounted or Base-Mounted Accessory Equipment.** The provisions in this subsection (l) are applicable to all ground-mounted and base-mounted accessory equipment in connection with small wireless facilities and other infrastructure deployments.
- (1) **Ground-Mounted Concealment.** On collector roads and local roads, the City prefers ground-mounted accessory equipment to be concealed as follows: (A) within a landscaped parkway, median or similar location, behind or among new or existing landscape features and painted or wrapped in flat natural colors to blend with the landscape features; and (B) if landscaping concealment is not technically feasible, disguised as other street furniture adjacent to the support structure, such as, for example, mailboxes, benches or information kiosks. On arterial roads outside underground utility districts, proposed ground-mounted accessory equipment should be completely shrouded or placed in a cabinet substantially similar in appearance to existing ground-mounted accessory equipment cabinets.
 - (2) **Public Safety Visibility.** To promote and protect public health and safety and prevent potential hazards hidden behind large equipment cabinets, no individual ground-mounted accessory equipment cabinet may exceed four feet in height or four feet in

width. Ground-mounted and base-mounted equipment cabinets shall not have any horizontal flat surfaces greater than 1.5 square inches to prevent litter or other objects left on such surfaces.

- (n) **Utilities.** The provisions in this subsection (m) are applicable to all utilities and other related improvements that serve small wireless facilities and other infrastructure deployments.
- (1) **Overhead Lines.** The Director shall not approve any new overhead utility lines in underground utility districts. In areas with existing overhead lines, new communication lines shall be "overlashed" with existing communication lines. No new overhead utility service drops shall be permitted to traverse any roadway used for vehicular transit.
 - (2) **Vertical Cable Risers.** All cables, wires and other connectors must be routed through conduits within the pole or other support structure, and all conduit attachments, cables, wires and other connectors must be concealed from public view. To the extent that cables, wires and other connectors cannot be routed through the pole due to insufficient internal space, the applicant shall replace the pole. Where installations are permitted on wood utility poles, applicants shall route cables, wires and other connectors through a single external conduit or shroud that has been finished to match the underlying pole.
 - (3) **Spools and Coils.** To reduce clutter and deter vandalism, excess fiber optic or coaxial cables shall not be spooled, coiled or otherwise stored on the pole outside equipment cabinets or shrouds.
 - (4) **Electric Meters.** Small cells and other infrastructure deployments shall use flat-rate electric service or other method that obviates the need for a separate above-grade electric meter. If flat-rate service is not available, applicants may install a shrouded smart meter that shall not exceed the width of the pole; provided, however that such smart meter shall be placed at least 10 feet above ground level. If the proposed project involves a ground-mounted equipment cabinet, an electric meter may be integrated with and recessed into the cabinet, but the Director shall not approve a separate ground-mounted electric meter pedestal unless (1) the separate ground-mounted meter pedestal would be placed off the sidewalk and (2) the applicant demonstrates with clear and convincing evidence that all other alternatives for the electric meter are technically infeasible.
 - (5) **Existing Conduit or Circuits.** To reduce unnecessary wear and tear on the public rights-of-way, applicants are encouraged to use existing conduits and/or electric circuits whenever available and technically feasible. Access to any conduit and/or circuits owned by the City shall be subject to the Director's prior written approval, which the Director may withhold or condition as the Director deems necessary or appropriate to protect the City's infrastructure, prevent interference with the City's municipal functions and public health and safety.
- (o) **Fire Safety Standards.** All wireless facilities shall include (1) a power shut off immediately accessible to fire service personnel, such as by means of rapid entry Knox or similar type systems installed as required by the Fire Chief, upon arrival at the scene of a fire and/or anticipated power surge due to power being turned off or on for any reason; (2) surge protection devices capable of mitigating a direct or partial direct lightning discharge; (3)

surge protection devices capable of mitigating significant electrical disturbances that may enter the facility via conductive cables; (4) at least one-hour fire resistant interior surfaces to be used in the composition of all structures. and (5) monitored automatic fire notification and extinguishing systems for all wireless facilities approved by the Fire Chief.

- (p) **Existing Facilities.** To the extent permitted under applicable law, any facilities in existence on the effective date of this policy shall be brought into compliance with these design standards at the earliest opportunity. This requirement shall not be interpreted or applied in a manner that prevents collocations or modifications subject to mandatory approval under 47 U.S.C. § 1455(a).

SECTION 12. PREAPPROVED DESIGNS

- (a) **Purpose.** To expedite the review process and encourage collaborative designs among applicants and the City, the City Council authorizes the Director to designate one or more preapproved designs for small wireless facilities and other infrastructure deployments. This Section 12 sets out the process to establish or repeal a preapproved design and the expedited review procedures and findings applicable to these applications.
- (b) **Adoption.** The Director may, in the Director's discretion, establish a preapproved design when the Director finds that a proposed preapproved design substantially complies with the design standards in this Policy. The Director shall specify the zones, aesthetic environments or other contexts in which any preapproved design type will be applicable. The Director shall post a public notice posted at Encinitas City Hall, with the City Clerk and in a newspaper of general circulation within the City. The notice must generally describe the preapproved design, include a photograph or photo simulation, specify whether the preapproved design would be limited or restricted in any zones and contain a reference to the appeal procedure. Unless appealed pursuant to the Encinitas Municipal Code, the preapproved design shall become effective 15 days from the notice required in this subsection. A decision by the Director not to adopt a proposed preapproved design or the Director's failure to act on a request for a proposed preapproved design is not appealable.
- (c) **Repeal.** The Director may repeal any preapproved design by written notice posted at Encinitas City Hall. The repeal shall be immediately effective. The Director's repeal, refusal to repeal or failure to act on a request to repeal a preapproved design is not appealable.
- (d) **Modified Findings.** When an applicant submits a complete application for a preapproved design, the Director shall presume that the findings for approval in Subsections 8(b)(1) are satisfied and shall evaluate the application for compliance with the findings for approval in the remaining paragraphs of Subsection 8(b).
- (e) **Nondiscrimination.** Any applicant may propose to use any preapproved design whether the applicant initially requested that the Director adopt such preapproved design or not. The Director's decision to adopt a preapproved design expresses no preference or requirement that applicants use the specific vendor or manufacturer that fabricated the design depicted in the preapproved plans. Any other vendor or manufacturer that fabricates a facility to the standards and specifications in the preapproved design with like materials, finishes and overall quality shall be acceptable as a preapproved design.

SECTION 13 EXCEPTIONS

- (a) **Preface.** The provisions in this Section 13 establish a procedure by which the City may grant an exception to the standards in this Policy but only to the extent necessary to avoid conflict with applicable federal or state law. When the applicant requests an exception, the Director (or the City Council on appeal) shall consider the findings in Subsection 13(b) in addition to the findings required under Subsection 8(b). Each exception is specific to the facts and circumstances in connection with each application. An exception granted in one instance shall not be deemed to create a presumption or expectation that an exception will be granted in any other instance. Other than a request pertaining to placement of a facility in a location described in Section 10(a)(4) (a Very High Fire Hazard Severity Zone), exceptions shall not be approved to override any fire safety or other public safety standard determined to be appropriate by the City.
- (b) **Findings for an Exception.** The Director (or the City Council on appeal) may grant an exception to any provision or requirement in this Policy only if the Director (or City Council on appeal) finds that:
 - (1) a denial based on the application's noncompliance with a specific provision or requirement would violate federal law, state law or both; or
 - (2) a provision in this Policy, as applied to the applicant, would violate any rights or privileges conferred on the applicant by federal or state law.
- (c) **Exception Requests.** An applicant may request an exception only at the time the applicant submits an application in conformance with Section 6(a)(15). The Director (or City Council on appeal) may consider additional information provided by the applicant after submittal to supplement the initial exception request. Any request for an exception after the initial submittal shall be deemed to be a new application.
- (d) **Expert Review.** Due to the technical nature of issues likely to be raised, independent consultant review will generally be appropriate when considering an exception request.
- (e) **Burden of Proof.** The applicant shall have the burden to prove to the Director (or City Council on appeal) that an exception should be granted pursuant to Subsection 13(b). The standard of evidence shall be the same as required by applicable federal or state law for the issue raised in the applicant's request for an exception.
- (f) **Legal Review.** The approval of any exception request shall require the consultation of the City Attorney as to the validity and legal justification for the exception.
- (g) **Scope of Exception.** If the Director (or the City Council on appeal) finds that an exception should be granted, the exception shall be narrowly tailored so that the exception deviates from this Policy to least extent necessary for compliance with federal or state law.